

BRITISH VIRGIN ISLANDS COURT OF APPEAL

Savita Indira Salisbury -v- The Director of the Office of National Drug and Money Laundering Control Policy ANUHCVAP 2012/0044

CIVIL APPEAL - INTERLOCUTORY APPEAL - APPEAL AGAINST CASE MANAGEMENT DECISION - RULE 56 OF THE CIVIL PROCEDURE RULES 2000 - RULE 26.9 OF THE CIVIL PROCEDURE RULES 2000 - WHETHER TRIAL JUDGE ERRED IN STRIKING OUT CLAIM ON THE BASIS OF ALLEGED BREACH OF THE RULES - WHETHER LEARNED TRIAL JUDGE EXERCISED HIS DISCRETION PROPERLY IN NOT UTILISING HIS CASE MANAGEMENT POWERS TO RECTIFY MATTERS WHERE THERE WAS A PROCEDURAL ERROR

This was an appeal by Savita Salisbury (the “Appellant”) against the decision of the Trial Judge to strike out the Appellant’s claim on the basis of her non-compliance with Rule 56.7(3) of the CPR.

The appeal was allowed. The Court of Appeal (sitting by a single justice) made a number of important findings on (i) the application of Rule 26.9(3) (i.e. the rule to correct matters where there has been a procedural irregularity) and (ii) when it might be appropriate to strike out a claim where there has been non-compliance and the rule or order does not provide for a sanction.

In relation to the second point, the Court held that “*in circumstances where the rule or order of the court does not provide for sanctions where there is a default in procedure, it is not open to the court to read any sanction into the rule*”. In examining the application of Rule 26.9(3), the Court held that it conferred jurisdiction to put matters right where there has been a procedural error. The Court felt that it was important that the Respondent would not have been prejudiced by an order to put matters right and that such an order furthered the overriding objective to deal with matters justly. The Court found that the Judge, by refusing to exercise his discretion under Rule 26, erred and was blatantly wrong.

Founded in 1928, Conyers Dill & Pearman is an international law firm advising on the laws of Bermuda, the British Virgin Islands, the Cayman Islands and Mauritius. With a global network that includes 130 lawyers spanning eight offices worldwide, Conyers provides responsive, sophisticated, solution-driven legal advice to clients seeking specialised expertise on corporate and commercial, litigation, restructuring and insolvency, and private client and trust matters. Conyers is affiliated with the Codan group of companies, which provide a range of trust, corporate secretarial, accounting and management services.

This article is not intended to be a substitute for legal advice or a legal opinion. It deals in broad terms only and is intended to merely provide a brief overview and give general information.